United Nations A/53/465

General Assembly

Distr.: General
7 October 1998

Original: English

Fifty-third session
Agenda item 143 (a)
Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations

Report on the first full year of implementation of the reformed procedures for determining reimbursement to Member States for contingent-owned equipment

Report of the Secretary-General

Summary

By its resolution 50/222 of 11 April 1996, the General Assembly adopted reforms to the procedures for determining reimbursement to Member States for contingent-owned equipment. The General Assembly also decided to review, at its fifty-second session, the operation of the reformed procedures and requested the Secretary-General to submit a report on the first full year of implementation thereof. By its resolution 51/218 E of 17 June 1997, the General Assembly requested the Secretary-General to convene the Phase IV Working Group prior to submitting his report.

The Phase IV Working Group, made up of technical and financial experts from troop-contributing countries, met with Secretariat representatives during the week of 9 to 13 February 1998. In plenary session, the Secretariat emphasized the need for the Working Group to review the rates published in the report of the Phase III Working Group and to facilitate the preparation of the report of the Secretary-General requested by the General Assembly. Following the first full year of implementation, the major issues of concern to the Secretariat included: (a) the heretofore unlimited financial liability of the United Nations in cases of loss of contingent-owned equipment due to hostile action or forced abandonment; (b) the overall financial impact of the retroactive implementation of the new procedures; (c) revised levels of medical support and related medical equipment requirements, as well as associated reimbursement rates; and (d) other issues related to changes in both

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reimbursement rates and performance standards for specific categories of major equipment and self-sustainment.

The Working Group endorsed the Secretariat's proposals regarding changes to performance standards in several self-sustainment categories. However, the Working Group was not in agreement with the Secretariat's proposal to set financial limits on the Organization's exposure in respect of losses attributable to hostile action. The Working Group recommended that the Secretariat prepare a detailed report on the financial implications of the retroactive implementation of the new procedures and postpone consideration of revised reimbursement rates for major equipment, pending a review to be conducted in 2001.

The Secretariat believes that the first full year of implementing the revised procedures has, to a large extent, accomplished the goals of simplifying the reimbursement process and providing the Organization with an essential planning and budgetary tool. With reference to the unresolved issues from the fiftieth session of the General Assembly, where the Secretariat held views different from those of the Working Groups, only two remaining issues now require clarification. The first of these issues involves the unlimited liability of the United Nations for losses resulting from the loss or damage of contingent-owned equipment in cases of hostile action or forced abandonment. The second unresolved issue is the previously approved policy that the United Nations should assume the costs related to "no fault" losses in the event the United Nations is not making payments for contingent-owned equipment in a timely manner. The cost of the retroactive implementation of the new procedures is an additional subject that needs further review and study.

The actions to be taken by the General Assembly are contained in paragraphs 52 and 53 of the present report.

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I. Background

1. In its resolution 47/218 B of 14 September 1993, the General Assembly requested the Secretary-General to submit a comprehensive report on all issues that affect the successful operation and administration of peacekeeping operations.

2. In his subsequent report to the General Assembly of 25 May 1994 (A/48/945 and Corr.1), the Secretary-General indicated that the procedures for determining reimbursement to Member States for contingent-owned equipment provided to peacekeeping missions had become overly cumbersome, both to the United Nations and to the contributing countries (para. 82). The Secretary-General also suggested that established procedures for compensation to Member States for military contingent personnel could be used as a model.

3. In its resolution 49/233 of 23 December 1994, the General Assembly authorized the Secretary-General to proceed with the project, in accordance with the proposed timetable set out in the annex to the resolution, with a view to setting comprehensive standards for each category of equipment and establishing rates of reimbursement. The Secretary-General was to invite Member States, in particular troop-contributing countries, to participate in the process and to submit proposals to establish new rates of reimbursement to the Assembly for approval.

4. The Secretariat undertook to identify, as part of phase I of the project, items of contingent-owned equipment for classification as either major or minor equipment by the Phase II Working Group.

5. Under phase II of the project, a Working Group consisting of technical experts from troop-contributing countries met from 27 March to 7 April 1995 to identify standards for major and minor equipment and consumables for which reimbursement would be authorized. The Working Group reached agreement that a force leasing concept based on a wet/dry lease arrangement should be adopted for mission budgeting, expenditure control and cost reimbursement purposes. It extended its review to consider a monthly dollar reimbursement rate linked to troop strength to cover self-sustainment costs and agreed that such costs were exclusive of the reimbursement rates approved by the General Assembly in its resolution 45/258 of 3 May 1991 (e.g. the $988 troop cost reimbursement rate). The report of the Phase II Working Group was issued as the annex to document A/C.5/49/66 of 2 May 1995. The report highlights a series of required actions for discussion in phase III of the project.

6. As recommended by the Phase II Working Group, an ad hoc working group hosted by the United Kingdom of Great Britain and Northern Ireland and consisting of technical and financial experts from seven troop-contributing countries met with Secretariat representatives in May 1995 to develop rates that could be considered by the Phase III Working Group.

7. Under phase III of the project, a working group of financial experts met from 10 to 20 July 1995 to consider the recommendations contained in the report of the Phase II Working Group, to review the rates of reimbursement proposed by the ad hoc working group and to make recommendations for comprehensive standards for which reimbursement would be authorized. The report of the Phase III Working Group was issued as the annex to document A/C.5/49/70 of 20 July 1995.

8. The results of the work of the Phase III Working Group were confirmed by an ad hoc working group, which met from 31 July to 4 August 1995. The group compared the cost of the proposed system with the cost of the current one by using data on 12 contingents from 9 countries participating in peacekeeping operations during 1993 and 1994. For the units compared, the group concluded that the proposed system was less expensive to the Organization than the present methodology. The ad hoc working group also compared the proposed generic fair market value figures with the United Nations Standard Cost Manual and concluded that there were no significant differences. The proposed self-sustainment rates, which were verified by the Secretariat by analysing survey data from a number of missions, were found to be reasonable.

9. In his report of 8 December 1995 (A/50/807), the Secretary-General recommended approval of most of the recommendations of the Phase II and Phase III Working Groups and, in respect of other items, made alternative recommendations for consideration by the General Assembly.

10. On 11 April 1996, the General Assembly, in its resolution 50/222, approved the report on the reform of the procedures for determining reimbursement to Member States for contingent-owned equipment, decided to review the operation of the revised procedures at its fifty-second session and requested the Secretary-General to submit for its consideration a report on the first full year of implementation of the revised procedures.

11. In its resolution 51/218 E of 17 June 1997, the General Assembly requested the Secretary-General to convene the Phase IV Working Group prior to submitting his report on the first full year of the implementation of revised

procedures. The resolution also reiterated that, for missions activated prior to 1 July 1996, countries had the option to accept reimbursement under either the new or the old reimbursement methodology.

12. In the light of resolution 51/218 E and pursuant to provisions contained in the report of the Phase III Working Group (A/C.5/49/70, para. 51 (c)), paragraphs 4 to 6 of General Assembly resolution 50/222 and paragraph 2 of section I of Assembly resolution 51/218 E, the purpose of the Phase IV Working Group was to review the rates published in the Phase III report and to facilitate the preparation of the first-year report requested by the General Assembly.

13. The Secretariat presented to the Phase IV Working Group 15 issue papers (see annex I) on the experience gained so far in the implementation of the new procedures. Section II of the present report includes the recommendations of the Secretary-General to the General Assembly on the issues reviewed by the Phase IV Working Group. Section III is devoted to comparative data on the recommendations of the Working Groups not endorsed by the Secretary-General at the fiftieth session of the Assembly, while sections IV and V of the report contain conclusions of the Secretary-General and recommendations to the Assembly.

II. Issues examined by the Phase IV Working Group and related recommendations by the Secretary-General

14. The Working Group received the issue papers presented by the Secretariat, as well as specific proposals submitted on issues of concern to Member States. This section of the report summarizes the recommendations presented by the Secretariat and Member States at the meeting of the Phase IV Working Group. For the purpose of simplification, the recommendations of the Secretary-General are presented in the same order as those of the Phase IV Working Group. The report of the Phase IV Working Group is contained in the annex to document A/C.5/52/39.

Legally binding aspects of the memorandum of understanding (Working Group report, para. 65)

15. This issue arose from the comments of several Member States regarding specific wording of the agreement document and concern about requiring approval of their parliaments prior to entering into the agreement. The Working Group recommended that the final form of the document could vary when the United Nations enters into negotiations with Member States as long as the legally binding aspects of the agreement remain. The Secretariat concurs with the recommendation.

Levels of reimbursement for loss or damage in cases of hostile action or forced abandonment (Working Group report, para. 66)

16. This issue was raised by the Secretariat as a result of concerns regarding the unlimited financial liability of the Organization resulting from the current policy. An issue paper was presented to the Working Group with recommendations to limit this financial liability. The Working Group recommended the continuation of the current policy of reimbursing major equipment items when the loss exceeds $250,000. They also recommended that:

(a) No upper limits be placed on justified claims;

(b) In view of the possibility of large claims, the Secretariat should recommend appropriate measures for handling such claims.

17. The Secretariat raised the issue of the adverse financial implications for the Organization inherent in the acceptance of unlimited financial liability for these equipment losses. The Secretariat presented an issue paper to the Phase IV Working Group (see annex II). The available data on the number of claims received and the level of reimbursement requested are contained in paragraph 47 (c) of the present report. At the present time, no budgetary provisions are made for losses due to hostile action or forced abandonment. It should be noted, however, that the General Assembly has established an upper limit in cases of death and disability of contingent members and a financial limit on most third-party claims. It should be noted that the Assembly, in its resolution 52/247 of 26 June 1998, has provided that in exceptional circumstances, the Secretary-General may recommend to the Assembly, for its approval, that the limitation of $50,000 may be exceeded in a particular case if the Secretary-General, after carrying out the required investigation, finds that there are compelling reasons for exceeding the limitation.

Dispute resolution (Working Group report, para. 67)

18. This issue is a Working Group initiative that formalizes procedures whereby the Secretariat's representatives would be contacted in the event of disagreements between troop-contributing countries and the

United Nations regarding contingent-owned equipment matters. The Secretariat concurs with this recommendation.

United Nations responsibility for loss or damage during transportation (Working Group report, para. 68)

19. This issue was initiated by the Working Group as a result of concern over the lack of reimbursement for equipment damaged during shipment. The Working Group recommended that the standards for this category in the current version of the contingent-owned equipment manual be revised and that the issue of loss or damage be clarified and implemented by the Secretariat to ensure that troop-contributing countries are reimbursed where significant damage occurs to contingent-owned equipment during transportation. Significant damage could be interpreted to mean damage wherein repairs amount to 10 per cent or more of the generic fair market value of the equipment item.

20. While the Secretariat agrees that a troop-contributing countries should be reimbursed for damages, the Working Group recommendation would require a detailed condition inspection of every equipment item at the port of departure, upon arrival and even at some transshipment points. A significant increase in United Nations personnel or in contractual services would be required to undertake such inspections, resulting in additional financial requirements for personnel, travel, subsistence and commercial contracts. It is therefore recommended that prior to acceptance of the Working Group proposal, the Secretariat conduct a study to determine the practicality and cost of this proposal.

Universality of mission factors (Working Group report, para. 69)

21. The Working Group discussed the issue of having several different mission factors applied within one mission area in recognition of the differences in terrain and operating environments. However, it was concluded that it would be too difficult to administer such a policy. As a result of discussions on this matter, the Working Group recommended a review of mission factors in the third month of a mission. The Secretariat does not believe this requirement promotes the simplification of procedures inherent in the new reimbursement methodology for contingent-owned equipment. Mission factors are established by the Secretariat prior to the start of a mission in order to secure provisions in the budget, and establishing credible budget estimates for a proposed mission is an important consideration. Current procedures allow the Chief Administrative Officer to request a review of mission factors should it be determined that the situation in a mission area has changed significantly.

Period of reimbursement (Working Group report, para. 70)

22. An issue paper was presented by the Secretariat seeking recognition of the fact that operating costs incurred by contingents during the drawdown phase of a mission are significantly reduced and that these reductions should be reflected in rates of reimbursement to Member States. The Working Group agreed with the Secretariat's recommendation to reduce the rate for major equipment and self-sustainment during the drawdown period. The revised rate would be 50 per cent of the monthly lease and self-sustainment rates being reimbursed prior to the drawdown.

Status of contingent-owned equipment manual (Working Group report, para. 71)

23. The Secretariat agreed with the recommendation on the review and a revision of the contingent-owned equipment manual, to be completed no later than mid-1999.

Establishing dates for applying procedures in current missions (Working Group report, para. 72)

24. The Working Group recommended that a transitional plan to the new system of reimbursement be worked out by the Secretariat for consideration and approval by the General Assembly by the end of 1998. The Working Group recommended that a plan be submitted with a cut-off date by which all missions should be operating under the new system.

25. The Secretariat concurs with the recommendation that all missions should be transitioned to the new procedures and will continue working at both the headquarters and mission levels to meet the recommended target date for submission of a plan. However, it should be noted that a significant amount of work is involved in preparing this transition plan. The field missions will need the cooperation of the military contingents to identify the expected remaining life of each item of major equipment before that equipment can be scheduled for replacement under the new procedures. The establishment of this baseline for contingent-owned equipment will determine if the plan can be prepared within the recommended time-frame. Once the transition plan is completed and approved by the General Assembly, the proposed schedule will provide the framework and time line under which the Secretariat will introduce the new procedures in these missions. It should also be noted that

significant amounts of equipment currently in use in long-established missions have been fully paid for under the previous procedures for contingent-owned equipment. The Secretariat fully recognizes the advantages of having all units transitioned to the new procedures. However, given the limited financial resources available, the implementation of the revised procedures in these missions will have to be accomplished in phases to take into account the useful life of some existing equipment for which countries have been fully reimbursed under the old procedures.

Retroactive implementation (Working Group report, para. 73)

26. The Secretariat addressed the issue of the cost of retroactive implementation of the new procedures for missions in the liquidation phase in an issue paper (annex III). In that paper, the Secretariat suggested that, on the basis of data related to some processed contingent-owned equipment claims, the amounts to be reimbursed, using the new reimbursement system retroactively, appeared to be larger than the estimated amounts under the old procedures, with total reimbursement exceeding established funding for contingent-owned equipment in mission budgets. In order to prevent possible funding shortfalls, the Secretariat proposed implementation of several measures which the Working Group did not consider. The Working Group stated that:

(a) The new procedures for contingent-owned equipment are far superior to the old and noted the challenges of the retroactive application of the new procedures to existing and terminated missions. However, the Working Group recommended that no change be made to the current practice of applying the new procedures retroactively;

(b) There was insufficient documentation to assess the financial implications for the United Nations of the retroactive application of the new procedures. The Working Group recommended that the Secretariat prepare a detailed report on the financial implications of retroactive application, and present it to the General Assembly.

27. The Secretariat takes note of the position of the Working Group on this matter and will prepare the required report in order to evaluate the impact of the retroactive implementation of the new procedures. This can only be completed when all relevant claims have been processed for liquidated or liquidating missions.

28. A definitive comparison of the two systems is not available at the present time. In order to achieve an accurate comparison between the two systems, all relevant information must be gathered and as many claims as possible must be processed. Once these actions have been completed, the Secretariat will recalculate and confirm rates of reimbursement for all missions. An average of those rates may provide a more accurate indication of the cost of the retroactive use of the new procedures.

United Nations standards of logistic support (Working Group report, para. 74)

29. The recommendation of the Working Group to establish standards for logistics support was an issue that had been previously reviewed by the Secretariat, and a programme was already under way within the Field Administration and Logistics Division to establish standards of support for goods and services provided by the United Nations. The Secretariat concurs with the recommendation.

Reimbursement rate for late return of equipment from the mission area (Working Group report, para. 75)

30. By this Working Group initiative, a troop-contributing country will be reimbursed at the dry-lease rate for excessive delays in the repatriation of its contingent-owned equipment. The delays referred to by the Working Group have been effectively eliminated by improvements made by the Secretariat to effect improvements in contracting for shipping. The Secretariat proposed the 14-day grace period and concurs with the Working Group recommendation.

Review of major equipment standards (Working Group report, para. 76)

31. The Secretariat presented an issue paper on performance standards for major equipment and recommended that the rates be reviewed for eight different categories of equipment. The Secretariat also requested revisions and clarifications of performance standards for major equipment approved by the previous two Working Groups. The Working Group recommended that any review of the reimbursement rates for equipment be considered in the next rate review, which should be conducted in 2001. They further recommended that performance standards be stated in terms of operational capability. The Secretariat notes the Working Group recommendation; however, given the fact that the initial rates were established in 1996, the General Assembly might consider requesting that the review of rates and performance standards for major equipment be conducted in 1999.

Major equipment usage (Working Group report, para. 77)

32. The Secretariat presented an issue paper clarifying for Member States that a contingent using major equipment, such as a mobile kitchen trailer, will receive only self-sustainment reimbursement for catering. Reimbursement for the equipment would constitute a double payment. The Working Group agreed with the recommendation of the Secretariat.

Relationship between a soldier's kit and self-sustainment (Working Group report, para. 78)

33. The Secretariat presented an issue paper on the clarification of the contents of the soldier's kit in relation to the payment of other self-sustainment items. The Working Group recommended that a standardized mission-specific personal equipment listing be approved prior to deployment to a mission. The Secretariat concurs with this recommendation.

Catering and electrical self-sustainment categories (Working Group report, para. 79)

34. The Secretariat presented an issue paper that clarified the reimbursement procedures for contingents required to provide support to an observation post or subunit away from the base camp. The additional category of support and the rate recommended by the Secretariat was agreed to by the Working Group.

Communications (Working Group report, para. 80)

35. The Secretariat presented an issue paper recommending revised performance standards (appendix IV of the Working Group report) for self-sustainment reimbursement for communications. The Working Group agreed with the recommendation of the Secretariat.

Office supplies (Working Group report, para. 81)

36. The Secretariat presented an issue paper recommending that reimbursement of office supplies/equipment be limited to the number of personnel using office equipment, as previously recommended by the Advisory Committee on Administrative and Budgetary Questions in its report of 9 July 1996 (A/50/995). The Working Group did not concur with the proposal of the Secretariat and recommended that the monthly rate of $21.25 be reimbursed for the entire contingent. They further proposed the performance standards in this category be revised as follows:

"To receive the office self-sustainment reimbursement rate the contingent must provide:

"– Office furniture, equipment and supplies for all unit headquarters staff;

"– Office supplies and services to personnel within the contingent;

"– An electronic data-processing and reproduction capability, including necessary software, to run all internal headquarters correspondence and administration, including necessary databases;

"– The unit is responsible for maintaining and servicing its offices, including all equipment, repair parts and supplies;

"– The rate is to be applied against the total contingent population;

"– When the United Nations provides offices to an equivalent standard, the unit does not receive reimbursement for this category."

37. The Secretariat concurs with the recommendation on revised performance standards. However, the Secretariat recommends that the issue of reimbursement for the entire contingent or for only those troops in administrative posts be discussed during the next rate review, which should also include the basis for the rate.

Explosive ordnance disposal (Working Group report, para. 82)

38. The Secretariat made a proposal to eliminate reimbursement in this category based on the premise that once an accommodation area is cleared there is no continuing need for sustaining an explosive ordnance disposal capability. The Working Group did not fully concur with this recommendation; it proposed minor revisions to the contingent-owned equipment manual, and recommended that the issue be further reviewed.

Laundry and cleaning (Working Group report, para. 83)

39. The Secretariat presented an issue paper recommending that four areas of support to contingents (dry cleaning of special clothing, haircutting, tailoring and cobblering) be included in the rate for laundry and cleaning. The Working Group did not concur with the proposal of the Secretariat. The Working Group did not agree with covering those items in this category, and they presented a

recommended revision to the performance standards that included the dry cleaning of operationally required specialist clothing such as fire retardant flight suits.

Tentage and accommodation (Working Group report, para. 84)

40. The Secretariat presented an issue paper focusing on the requirement to pay both a tentage and accommodation rate when unable to provide semi-rigid or rigid accommodations after six months in tents. The Working Group recommended a mechanism whereby the Secretariat may request a temporary waiver of the application of this dual payment requirement for missions of short duration, where the provision of hard accommodation is impractical and not cost-effective. The Secretariat continues to believe that if a contingent is not provided semi-rigid accommodations after the six-month period, the rate of reimbursement should be increased from the $20 tentage to the rate of $36 per person/month for accommodations, not to the $56 per person/month to include both tentage and accommodation.

Identification (Working Group report, para. 86)

41. The Secretariat presented an issue paper recommending that this category be eliminated, since experience has shown that the production of identification cards has been done by the United Nations and no significant sustainment in this category is required. The Working Group recommended that the standards for reimbursement for this category not be changed and that the issue be addressed by the Secretariat at the next rate review.

Field defence stores (Working Group report, para. 87)

42. The Secretariat presented an issue paper recommending that either this category be eliminated or the rate of reimbursement be reviewed to reflect the fact that after the initial establishment of a camp, the utilization of and expenses incurred by contingents for field defence stores is significantly reduced. The Working Group postponed the review of rates for field defence stores to the next overall review.

Nuclear, biological and chemical protection (Working Group report, para. 88)

43. The Working Group proposed a revision to the performance standards for nuclear, biological and chemical protection, which the Secretariat has recommended for approval and inclusion in the revision of the contingent-owned equipment manual.

Review of levels of medical support (Working Group report, para. 89)

44. The Secretariat presented a comprehensive issue paper with recommendations for the revision of medical support services (annex III of the Working Group report). The Working Group recommended approval of the three levels of support proposed by the Secretariat. They further recommended that details within each level, and associated equipment, be finalized after Member States have reviewed the detailed report from the Medical Unit.

Items requiring action in phase V (Working Group report, para. 93)

45. The Secretariat had proposed a review of the rates in the terms of reference for the Phase IV Working Group. This review of the rates was not completed as requested by the Secretariat. The Phase IV Working Group further recommended that:

(a) The Secretariat, together with Member States, conduct a major review of the contingent-owned equipment manual to ensure that it incorporates the recommendations of the phase II, III and IV reports, as approved by the General Assembly. A revised manual should be completed no later than mid-1999;

(b) The Secretariat convene the Phase V Working Group in 2001 to review and validate reimbursement rates, procedures and standards. In addition, the Working Group should propose subcategories within current categories of contingent-owned equipment;

(c) The Secretariat should develop recommendations for including the use or application of procedures for contingent-owned equipment in the United Nations Standby Arrangements System, if applicable.

46. The Secretariat concurs with the time line recommended for the revision of the contingent-owned equipment manual. However, the reimbursement rates for major equipment have not been reviewed by the Working Group as was anticipated. If this review is conducted in 2001, there will have been a five-year period from the initial establishment of the rates to the first review. In light of the fact that the General Assembly approved the initial proposal of the Phase III Working Group recommending that reimbursement rates be reviewed by the Secretariat at the end of the first 12-month period for initial validation and biennially thereafter, the Assembly might consider proposing

an initial review of the rates prior to the year 2001. The Secretariat can compile data on equipment costs to be forwarded to Member States for review in 1999, with the intention that new rates will be effective for budgets beginning 1 July 2000.

III. Comparative data on recommendations of the working groups not endorsed by the Secretary-General

47. In its resolution 50/222, the General Assembly requested that the report of the Secretary-General on the first full year of implementation of the reformed procedures pertain to all elements of the reformed procedures, in particular to those elements of the recommendations of the Working Groups that were not specifically endorsed by the Secretary-General in his report, and decided to request the Secretary-General in that regard to include in the report comparative data on the differences between the adopted system and other proposals contained in the reports of the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions. The issues with which the Secretary-General was not in agreement in the reports of the Phase II and III Working Groups included inland transportation, liability of the United Nations under the lease system, loss or damage of equipment in cases of hostile action or forced abandonment, and "mission factors", such as environmental and operational conditions. The position of the Secretariat on these issues, as presented in the report of the Secretary-General of 8 December 1995 (A/50/807), and the most recent comparative data on the issues follows:

(a) **Inland transportation**. The Working Group requested reimbursements for the actual costs incurred for the inland transportation of all contingent-owned equipment. The Secretariat did not support this proposal and stated that the Organization had received claims in which the cost of the inland transportation exceeded the cost of shipment from the port of embarkation/disembarkation to the mission areas. It also stated that the proposal had the potential to add substantial costs to the annual budgets of peacekeeping missions. In respect to comparative data, as of 15 May 1998, eight claims totalling $645,201 had been submitted for the payment of inland transportation in the context of the implementation of the new procedures. There would have been no reimbursement for inland transportation under the policy recommended by the Secretariat. If the above-mentioned claims and amounts to be reimbursed are representative of inland transportation claims to be reimbursed under the new procedures, the Secretariat is of the belief that these costs can be included in the budget to be reimbursed to the troop-contributing countries. The Secretariat will address this matter at the next rate review with the intention of establishing a predictable standard reimbursement rate or "inland transportation" factor for miles the equipment is transported;

(b) **Liability of the United Nations under the lease system**. The Working Group proposed that in the event that the United Nations does not meet its full liability under the lease system, total responsibility for loss or damage due to no-fault incidents to contingent-owned equipment and supplies would revert to the United Nations. As stated in the report of the Secretary-General (A/50/807, para. 31), the intention of this proposal was that if the United Nations failed to make payment for usage of contingent-owned equipment in a timely manner, total responsibility for loss or damage to such no-fault events would revert to the United Nations. The Secretariat did not support the proposal and did not recommend its adoption by the General Assembly. As there is a factor included in the usage rates to cover such loss or damage, approval of the proposal would lead to a double payment to troop-contributing countries. Furthermore, the timely reimbursement to troop-contributing countries is dependent on the timely payment of assessed contributions by Member States. As no claims have been filed requesting payment under this category, there is no comparative data to present. The Secretariat continues to maintain the position that a double payment is not justified and further recommends that the General Assembly reconsider its prior approval of the Working Group III recommendation on assuming such liability;

(c) **Loss or damage to equipment due to hostile action or forced abandonment**:

(i) The Phase III Working Group recommended that the United Nations should be responsible for compensating troop-contributing countries for loss of or damage to major equipment due to hostile action or forced abandonment in respect of each and every item of major equipment valued at $250,000 and above, as well as of major equipment whose collective value equals or exceeds $250,000. It was recommended that only individual items exceeding $250,000 be considered compensable under this category. It was further pointed out that the proposal exposed the United Nations to extensive financial liability and that it would be difficult to make prior estimates on which to base requests for appropriations for compensating

Member States for these losses. The Secretariat further stated that the Working Group recommendation could only be accepted if fixed and reasonable limits on the amounts compensable, per peacekeeping operation and per contributing Member State, were established;

(ii) It is difficult to present exact comparative data, as the Secretariat did not make a specific recommendation on the total amounts compensable. As of 15 May 1998, the United Nations had received claims from six troop-contributing countries (five claims related to the United Nations Protection Force and one to the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium). The total amount of these claims was approximately $50 million. Under the current procedures approved by the General Assembly, a Member State is reimbursed the generic fair-market value of an item of equipment in the event it is lost due to hostile action or forced abandonment. This policy has resulted in a situation in some of the claims submitted to date where a Member State will be reimbursed an amount that is significantly higher than the original cost provided in the in-survey for these items of equipment (armoured personnel carriers). The Secretariat is recommending that no reimbursement should be in excess of the residual value of the equipment lost in these cases. The Secretariat recommends a change in the previously approved policy to the effect that in losses due to hostile action or forced abandonment, the amount used as the basis for reimbursement will be the lesser of the generic fair-market value or the residual value of the equipment lost;

(d) **"Mission factors", environmental and operational conditions**. The Phase III Working Group recommended that two factors be established, one recognizing the climatic and terrain conditions and another recognizing intensified operational conditions such as the length of the logistics chain, availability of commercial repair and support facilities and other operational hazards. The recommendation states that each of these factors should not exceed 5 per cent, with the total not to exceed 10 per cent of the reimbursement rates established for major equipment and self-sustainment categories. The Secretariat previously recommended that these rates be combined into one factor, which should not exceed 5 per cent. After having reviewed the matter in light of the establishment of these factors for recent missions, the Secretariat agrees with the present policy of two separate factors.

IV. Conclusion

48. The Secretariat believes that the revised procedures accomplish the goal of simplifying the reimbursement procedures and provide a much more logical basis for calculating mission budgets. The success of the revised procedures can only be recognized when the system is utilized prospectively, as is the current case for the mission in the Central African Republic. The major issues of concern to the Secretariat are the financial implications resulting from the retroactive implementation of the new procedures to missions in the liquidation phase and the financial liability to the United Nations for losses of contingent-owned equipment due to hostile action or forced abandonment. The Secretariat is of the view that the General Assembly will need to address the financial implications of the retroactive implementation in the light of the performance reports of the liquidating missions.

49. The Working Group recommended that there should be no limits on reimbursements for losses due to hostile action or forced abandonment. The General Assembly may consider the issue of unlimited financial liability for losses due to hostile action and forced abandonment of contingent-owned equipment in the global context of the overall review of temporal and financial limitations on claims against the Organization.

50. The recommendations of the Secretariat on changes in performance standards in several self-sustainment categories were endorsed by the Working Group. The Working Group deferred the review of reimbursement rates for major equipment and self-sustainment categories to the year 2001. Based on the General Assembly approval of the Phase III Working Group recommendation to review the rates after 12 months, consideration should be given to advancing the initial review of the reimbursement rates to a date earlier than that recommended in the phase IV report.

51. On those elements of the recommendations of the Working Groups not specifically endorsed by the Secretary-General in his report (A/50/807), only the issues of the liability of the United Nations under the lease system and loss of or damage to equipment due to hostile action or forced abandonment still require further clarification.

V. Actions to be taken by the General Assembly

52. The Secretary-General supports all the recommendations made in the report of the Phase IV Working Group (A/C.5/52/39), except with regard to the following issues:

(a) The General Assembly may wish to consider a financial limitation for claims resulting from losses of contingent-owned equipment due to hostile action or forced abandonment. The Secretary-General recalls in this respect the Assembly's overall review of the temporal and financial liability for claims against the United Nations;

(b) The Secretariat takes note of the recommendation by the Working Group that the United Nations should assume responsibility for reimbursing troop-contributing countries when the loss of or damage to equipment during transportation exceeds 10 per cent of the generic fair market value of the item of equipment. However, the Secretariat recommends that a study be carried out to determine the practicality and cost of this proposal prior to its approval and implementation;

(c) The General Assembly might consider the fact that the current procedures allow for a review of mission factors in the event of a drastic change of conditions in the mission area. The Secretariat is of the view that the current procedures are adequate and a review at the three-month period is unnecessary.

53. It is further recommended that the General Assembly:

(a) Recognizing that some peacekeeping missions will be of limited duration, approve a policy whereby if a contingent is not provided semi-rigid accommodations at the end of a six-month period in tents, the troop-contributing country would be reimbursed at the monthly accommodation rate of $36 per soldier;

(b) Approve a policy whereby the introduction of, and transition to, the new procedures in existing peacekeeping missions will be determined by the plan being prepared by the Secretariat for the review and approval of the General Assembly at the fifty-third session;

(c) Approve a policy whereby the United Nations does not assume additional financial responsibilities resulting either from the inability to make payments for contingent-owned equipment owing to lack of funding or from "no-fault" losses when an insurance factor has been included in the usage charge agreed to in the memorandum of understanding with the troop-contributing country;

(d) Confirm that in claims involving losses due to hostile action or forced abandonment, the basis for reimbursement for an item of equipment will be the lesser of the generic fair market value or the residual value of the equipment lost;

(e) In light of the fact that the Phase IV Working Group did not conduct the first year review of reimbursement rates, approve an authorization for the Secretariat to convene the Phase V Working Group to conduct an initial review of the rates in 1999 for inclusion in mission budgets commencing 1 July 2000.

Annex I

Secretariat issue papers presented to the Phase IV Working Group

Medical – major equipment and self-sustainment

Contingent-owned equipment lost as a result of hostile action

Retroactive implementation of the new contingent-owned equipment procedures

Performance standards – major equipment

Eligible period of reimbursement

Major equipment usage

Relationship between a soldier's kit and self-sustainment

Catering and electrical

Communications

Office

Explosive ordnance disposal

Laundry and cleaning

Tentage/accommodations

Identification

Field defence stores

Annex II

Phase IV Working Group: proposed issues for discussion

Contingent-owned equipment lost as a result of hostile action

Issue

Establishment of financial limits on claims for reimbursement to troop-contributing countries for their contingent-owned equipment which is damaged, destroyed or abandoned as a result of hostile action in missions in which they participate.

Situation

In keeping with the Working Group's recommendation, reimbursements for contingent-owned equipment lost as a result of hostile action have been restricted to those losses involved in a single incident in which the "collective generic fair market value equals or exceeds the threshold value of $250,000". The procedures stipulate that reimbursement to the troop-contributing countries is based on the generic fair market value of the equipment less the dry lease rate payment made by the United Nations for that equipment while used in the mission area. This contributes to reducing reimbursements but does not put a financial limit on the total amounts reimbursable to troop-contributing countries.

The General Assembly has expressed concern about the potential liabilities of the Organization. It has therefore established limits on amounts for compensation. Such a limit has been introduced recently in respect of reimbursements for death and disability benefits compensation and liability for third-party claims. Additionally, in view of the comparatively larger amounts and risks involved, the question of losses relating to aircraft and vessels has been kept out of contribution agreements and left subject to negotiation between the Organization and troop-contributing countries. In taking these decisions, the Organization was keenly aware of the impact inordinately large claims could have on its already precarious financial position.

A review of recent claims of this type shows that they range between approximately $500,000 and $15 million, with the average being about $5.5 million. Only two claims are larger than $10 million, while the next ranking claim is about $6 million.

Recommendation

The Working Group may wish to propose a financial limit in keeping with the precedent cited above and recent experience. Such a limitation could take the form of:

(a) A fixed dollar limit – as in the cases of death and disability and third-party claims – on the maximum amount payable to a troop-contributing country for a single incident as already defined;

(b) Such maximum amount calculated as a percentage of the generic fair market value of contingent-owned equipment held by the troop-contributing country in the mission area;

(c) A maximum overall amount per mission per mandate period calculated as a percentage of the mission budget out of which all such claims would be paid on a pro rata basis;

(d) Any other means of limiting the liability of the Organization.

Annex III

Phase IV Working Group – issue paper

Retroactive implementation of the new procedures for contingent-owned equipment

Background

In the report of the Secretary-General of 8 December 1995 (A/50/807), it is stated that acceptance by the General Assembly of these concepts should not result in additional costs to peacekeeping mission budgets. While there is expectation that some savings are likely to accrue, it is not possible to indicate what they might be in the absence of actual implementing experience.

In its resolution 50/222, the General Assembly decided that the reform procedures should be in place from 1 July 1996 and that for missions activated prior to 1 July 1996, troop-contributing countries would have the option to accept reimbursement under either the new or the old reimbursement methodology. In its resolution 51/218 E, the Assembly reiterated that, for missions activated prior to 1 July 1996, countries have the option to accept reimbursement under either the new or the old reimbursement methodology.

Discussion

The only manner in which one can make a valid comparison of the costs of the two systems would be in the planning process for a start-up mission. In the planning phase for a new mission, the Organization could use operational analysis models in which the costs would be programmed for different levels of logistic support with the requisite numbers of United Nations administrative, logistics and contractor personnel required in each scenario. If the troop-contributing country deployed with fully self-sustained units, there would be significant overhead expenses that would be reduced from the civilian personnel budgets. It should be understood that the experience with the new system to date has not allowed for the significant personnel reductions in the missions where the new system is being implemented retroactively.

The retroactive application of the procedures to completed missions has caused financial shortfalls owing to the fact that the overall reimbursement is exceeding the 10 per cent amount budgeted for contingent-owned equipment in some of these missions. In almost every retroactive reimbursement made to the troop-contributing countries to date, a higher amount was negotiated for the value of the contingent-owned equipment under the new procedures than would have been paid under the old system using the in-surveys. The differences between the two systems varied by country owing to the degree of sophistication of equipment, inventory value of the contingent-owned equipment and total troop strength. Detailed calculations have not been completed owing to the fact that a valid comparison of the old to the new would need to include all letters of assist for spares, amounts paid for consumables, as well as write-offs, and the specific data for some of these items is not available. In comparisons made to date, estimates were made for write-offs, spares and consumables based on historical data from liquidated missions. The end result was a conclusion that the total amount reimbursed as a percentage of total value of the contingent-owned equipment was higher under the new system as compared to the old. Given the fact that the majority of the benefits in relation to the new reimbursement system have not been obtained, there should be no misconception that the retroactive application of the new procedures is cost neutral. However, this might not be the case when we are using the system

for future missions and have specific control over the equipment to be reimbursed and are able to recognize the savings that should accrue as the result of the smaller number of United Nations personnel required to support the forces in the field.

Recommendation

It is requested that the Phase IV Working Group take note of the fact that in the retroactive implementation of the new procedures, the Secretariat was not able to exert the degree of control over the amount of equipment or numbers of personnel required to support that equipment that is envisioned under the new procedures. Consequently, this retroactive reimbursement has resulted in additional costs to the budgets of peacekeeping missions that are currently in the liquidation phase. It is recommended that the following proposals be considered by the Working Group to address the funding shortfalls that currently exist in liquidating missions as a direct result of the retroactive implementation of the new methodology for contingent-owned equipment:

(a) In the retroactive implementation of the new procedures, major equipment will be reimbursed at the dry lease rates only. In recognition of the fact that the United Nations provided the vast majority of contingent support for these liquidating missions, no reimbursement for self-sustainment will be authorized on a retroactive basis;

(b) In determining the retroactive dry lease monthly reimbursement rate for armoured personnel carriers, in cases where the inventory value as indicated in the in-survey is less than 25 per cent lower than the generic fair market value established for armoured personnel carriers, the reimbursement should be considered as a special case and the monthly reimbursement rate adjusted accordingly;

(c) In the retroactive reimbursement in hostile action cases with losses of major equipment exceeding the threshold of $250,000, the amount to be reimbursed should be limited to the lower of generic fair market value or the depreciated market value of the asset. Under the current procedures, claims have been submitted where if reimbursements are completed under current guidelines for contingent-owned equipment, the amounts reimbursed will significantly exceed the original in-survey value of the armoured personnel carriers;

(d) In long-established missions such as the United Nations Interim Force in Lebanon, where the majority of the military equipment has been fully paid for by the United Nations under the old procedures, the Working Group should give further consideration to establishing a transition period to change over from the old system to the new. At the present time, the General Assembly has stated that the choice of reimbursement methodology is up to the troop-contributing country. It is not believed that it was the intention of the original Working Groups to apply the retroactivity to these well-established missions.

The above recommendations are proposed to address the significant shortfall in funding that exists for missions whose mandates have ended and which are in the liquidation phase. It is not intended that these transitional measures for retroactive reimbursements would apply to future missions. In the event that the above proposals are rejected, the Secretariat welcomes any additional recommendations to address the funding shortfall that exists in the budgets for these liquidating missions.